

Illinois law imposes Retailers' Occupation Tax (sales tax) upon persons who sell computer software at retail. Computer software means a set of statements, data, or instructions to be used directly or indirectly in a computer in order to bring about a certain result in any form in which those statements, data, or instructions may be embodied, transmitted, or fixed, by any method now known or hereafter developed, regardless of whether the statements, data, or instructions are capable of being perceived by or communicated to humans, and includes prewritten or canned software that is held for repeated sale or lease, and all associated documentation and materials, if any, whether contained on magnetic tapes, discs, cards, or other devices or media (35 ILCS 120/2-25). (This is a GIL).

September 9, 1999

Dear Ms. Xxxxx:

This letter is in response to your letter dated June 11, 1999 that we received in our office on July 2, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Please accept this letter as a request for a written ruling regarding the applicability of sales tax on the following four items. Each of the items is related to a recently developed product called 'PRODUCT'. It is an electronic database created exclusively for a customer which can be used to produce a catalog for that customer in a variety of different forms.

1. COMPANY contracts with various customers to create exclusive electronic databases which are created, maintained and stored by COMPANY. The contract covers only the production and maintenance of the electronic database. There is no tangible product created. Invoicing is done based on the terms of the contract at various production milestones. When the electronic database is complete, the customer may choose to produce a print catalog, an online catalog or a catalog on CD-Rom. A new contract is executed at that time. Is the creation of the electronic database covered by the original contract subject to sales tax? Would this be considered a service and, therefore, not subject to sales tax?
2. The customer is charged a monthly maintenance and storage charge after the completion of the electronic database. This charge covers COMPANY maintenance of the database on its computer

systems. This is simply a service, and no tangible product is created. Is the storage and maintenance charge subject to sales tax, or is it considered a service and not subject to sales tax?

3. The customer may at any time in the future request a data extract from the database. This extract may be sent to the customer electronically or downloaded onto a diskette. Once again, with the exception of the diskette, no tangible product is created. Is the production of the extract subject to sales tax?
4. The customer may contract with COMPANY to produce an online catalog from the electronic database. The catalog would be produced electronically and loaded onto the customer's Internet site. No tangible product is created. Is the online catalog subject to sales tax?

Thank you for your consideration of the above items. Please contact me at #### if you need further information.

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The sale of canned software to Illinois users is considered to be the taxable sale of tangible personal property regardless of the form in which it is transferred or transmitted, including tape, disc, card, electronic means or other media. See 86 Ill. Adm. Code 130.1935(a). Tax applies to the entire charge made to the customer, including charges for all associated documentation and materials. Charges for updates of canned software are considered to be sales of software. Charges for training, telephone assistance, installation and consultation are exempt if they are separately stated from the selling price of canned software. Please refer to 86 Ill. Adm. Code 130.1935(b).

Generally speaking, a computer program prepared to the special order of a customer to meet the customer's special needs is custom software, Section 130.1935(c). This usually involves preparation of the program for the customer's use by analysis of the customer's requirements by the vendor and adaptation of the program by the vendor so it can be used in the customer's specific work environment. This may occur when a software database is created based upon the

specific requirements of a particular customer. However, if a database is created and marketed to the general public it would be taxable software assuming no other exemption applies.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.